

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 26, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

6 TABITHA S.,¹

No. 4:24-CV-05074-EFS

7 Plaintiff,

8 v.

9 LELAND DUDEK, Acting
10 Commissioner of Social Security,²

11 Defendant.

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

14 Due to fibromyalgia, piriformis syndrome of the right hip, bilateral knee
15 costochondritis, tendinosis of the right shoulder, anxiety disorder, panic disorder,
16 post-traumatic stress disorder (PTSD), wrist pain, adenomyosis, and anemia,

18 ¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as
19 "Plaintiff." *See* LCivR 5.2(c).

20 ² Leland Dudek has been named the Acting Commissioner of Social Security.
21 Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is
22 hereby substituted as the Defendant.

1 Plaintiff Tabitha S. claims that she is unable to work fulltime and appeals the ALJ
2 denial of her claim. She appeals the denial of benefits by the Administrative Law
3 Judge (ALJ) on the grounds that the ALJ erred by failing to consider new evidence
4 and by discounting it as not “material,” erred in assessing her testimony,
5 improperly analyzed the medical opinions, and erred in assessing the lay witness
6 testimony. As is explained below, the ALJ erred in his consideration of the medical
7 opinions and failed to develop the record properly by obtaining a medical opinion
8 from a source that had reviewed the updated evidence. This matter is remanded
9 for further proceedings.

10 **I. Background**

11 In March 2021, Plaintiff filed an application for benefits under Title 16,
12 alleging that she is disabled due to the impairments listed above. Plaintiff’s claim
13 was denied at the initial and reconsideration levels.³

14 After Plaintiff appealed denial of her application, ALJ Jesse Shumway held
15 a telephone hearing in July 2023, at which Plaintiff appeared with her
16 representative and testified.⁴ A vocational expert also appeared but did not testify
17 at the hearing.⁵ Prior to Plaintiff’s testimony, Plaintiff’s attorney noted on the
18 record that the state agency reviewers said there was no evidence in the medical

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³ AR 182, 187, 192, 195.

21⁴ AR 59-76.

22⁵ *Id.*

1 file regarding adenomyosis but that it was submitted later and the diagnosis was
2 first seen in the record in Exhibit 4F.⁶

3 Plaintiff testified that in her job at Amazon she worked as a picker in a
4 distribution center and that entailed getting a list of items out of containers and
5 setting them in a bucket to be shipped.⁷ She said that she would be on her feet for
6 an hour when getting the items and that throughout the nights she worked she
7 would have to go to the medical center because she had foot pain, would tire, or
8 would be light-headed and dizzy.⁸ She said she was either on her feet during the
9 ten-hour shift or in the medical center.⁹ She said that she would be climbing
10 ladders and lifted items up to 20 pounds that hurt her shoulder to lift.¹⁰ She
11 explained that she could not lift more than 20 pounds and they allowed her to ask
12 for help.¹¹ Plaintiff said that she was missing work due to fatigue from anemia and
13 that she was not picking the required number of items per hour and quit because

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17 ⁶ AR 62.

18 ⁷ AR 64.

19 ⁸ *Id.*

20 ⁹ *Id.*

21 ¹⁰ AR 65.

22 ¹¹ *Id.*

1 she was going to be fired.¹² She said that eventually she was given iron infusions
2 for her hemoglobin deficiency.¹³

3 Plaintiff testified that she had a GED and was 5'6" with her weight
4 fluctuating between 101 and 105 pounds.¹⁴ Plaintiff testified that fibromyalgia
5 causes her knees to lock up if she sits too long, to give out on her if she stands too
6 long, and to give out if she walks up and down stairs.¹⁵ She said that her walking is
7 only slightly affected and that she can sit or stand for up to an hour without
8 symptoms.¹⁶ She said that on a typical day she will get her children breakfast, then
9 clean a little, and then take a break.¹⁷ She said that every half hour she alternates
10 between sitting, standing, or walking, and that she lies down if she feels light-
11 headed or dizzy.¹⁸ Plaintiff said her children are aged 4, 7, and 10 and that she

12 *Id.*

13 AR 65-66.

14 AR 66.

15 *Id.*

16 AR 67.

17 *Id.*

18 *Id.*

1 watches them when her husband is working or out.¹⁹ She said that when he is
2 there he will watch the children and she will help keep the house clean.²⁰

3 Plaintiff said that she has worse days when she is menstruating and that
4 this used to be 5-6 days a month but is more recently 10 days per month.²¹ She
5 testified that she is not functional on those days because she had severe abdominal
6 pain because of her adenomyosis and that her children's father watches them on
7 those days.²² Plaintiff said that when she worked for Amazon the medical center
8 was located in the warehouse she worked in and that in a five days work week she
9 was in the medical center for four days a week, with three to five visits a day.²³ She
10 said that she could work for one hour without needing a break, while she was
11 working at Amazon and that the highest number of items she could pick an hour
12 was 172 but she was required to pick 300 items an hour.²⁴

13 Plaintiff testified that in recent years she had missed doctor's appointments
14 because her doctor, who worked with the Texas Community Health Clinic, is
15 scheduling patients on a 6-month wait and she had moved from Ridgeway, where
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17 ¹⁹ *Id.*

18 ²⁰ AR 68.

19 ²¹ *Id.*

20 ²² *Id.*

21 ²³ AR 69.

22 ²⁴ AR 69-70.

1 he is located, to Colfax.²⁵ She stated that she had gone to a counselor but was told
2 that there was nothing they could do for her and that she should be on
3 medication.²⁶ She said that most counseling centers do not take her health
4 insurance and she spoke with a doctor about seeing a therapist though Tri-City
5 Community Health.²⁷ She said it had been a couple years since she last saw a
6 therapist and that she was struggling and her depression was very bad but that
7 they no longer accepted her insurance.²⁸ Other counseling centers did not accept
8 her insurance but since her doctor took her insurance she thought they might also
9 cover mental health professionals.²⁹

10 Plaintiff said she had a hard time being in a crowd because her husband had
11 isolated her from others and now she has panic attacks if she is in a crowd.³⁰ She
12 said she also has days when she is depressed and does not want to get out of bed.³¹
13 She said that lately her depression was worse because of stress and family issues
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16 ²⁵ AR 70.

17 ²⁶ AR 71.

18 ²⁷ *Id.*

19 ²⁸ *Id.*

20 ²⁹ *Id.*

21 ³⁰ AR 72.

22 ³¹ *Id.*

1 and that she was having a hard time concentrating and completing tasks.³²
2 Plaintiff said she avoids being around others and does not like to be in a group of 5
3 or more people.³³ She said that she will go shopping when it is not crowded and will
4 sit in a corner by herself in waiting rooms.³⁴

5 Plaintiff testified that she was taking iron supplements but was still
6 exhausted two hours after waking.³⁵ She said she was not on medication for
7 fibromyalgia because she had to stop taking her medication five years prior when
8 she was pregnant and when she started it again it made her sick.³⁶ She said the
9 iron supplements make her nauseous every once in a while.³⁷ Plaintiff said that she
10 had stinging pain in her dominant right shoulder when she stretches her arm and
11 has a hard time reaching above her shoulder.³⁸

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³² *Id.*

17 ³³ AR 73.

18 ³⁴ *Id.*

19 ³⁵ AR 73-74.

20 ³⁶ AR 74.

21 ³⁷ AR 75.

22 ³⁸ *Id.*

1 After the hearing, the ALJ issued a decision denying benefits.³⁹ The ALJ
2 found Plaintiff had rebutted the presumption of nondisability due to a prior denial
3 of her claim because she alleged a worsening of her condition but also found that
4 the new material submitted did not warrant a different finding and was therefore
5 not material.⁴⁰ As to medical opinions, the ALJ found:

- 6 • The opinions of state agency evaluators Robert Stuart, MD, and Glenn
7 Gade, MD, to be generally persuasive.
- 8 • The opinions of state agency evaluators Kristine Harrison, PsyD, and
9 John Gilbert, PhD, to be generally persuasive.
- 10 • The opinions of consultative examiner, Ioly Lewis, PMHNP, to be
11 partially persuasive.⁴¹

12 The ALJ also considered the third-party statement of Plaintiff's partner, Farel P.⁴²
13 As to the sequential disability analysis, the ALJ found:

- 14 • Step one: Plaintiff has rebutted the presumption of continuing
15 nondisability by showing "changed circumstances" due to an alleged
16 increase in symptoms.

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³⁹ AR 14-33. Per 20 C.F.R. § 416.920(a)-(g), a five-step evaluation determines
19 whether a claimant is disabled.

20⁴⁰ AR 20-21.

21⁴¹ AR 26-27.

22⁴² AR 27.

- Step one: there is no “new and material” evidence relating to several findings in the prior decision, and the ALJ was bound to adopt those findings, as well as that
- Plaintiff has not engaged in substantial gainful activity since March 26, 2021, the application date.
- Step two: Plaintiff had the following severe impairments: fibromyalgia, piriformis syndrome of the right hip, bilateral knee costochondritis, tendinosis of the right shoulder, anxiety disorder, panic disorder, depressive disorder, and PTSD. Plaintiff also had the following medically determinable non-severe impairments: right wrist pain, acute pelvic inflammatory disease, adenomyosis, dysmenorrhea, ankle sprain, anemia, and plantar fasciitis.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments with consideration of Listing 1.18, 14.09, 12.04, 12.06, and 12.15.
- RFC: Plaintiff had the RFC to perform light work with the following exceptions:

[Plaintiff can] occasionally kneel, crouch, crawl, and climb ramps, stairs, ladders or scaffolds; frequently stoop; occasionally reach overhead with the dominant right upper extremity; avoid all exposure to extreme cold temperatures and unprotected heights; perform simple, routine tasks with a reasoning level of 3 or less; work involving only occasional changes in the work setting; work involving only occasional and superficial interaction with the public and coworkers.

- 1 • Step four: Plaintiff has no past relevant work.
- 2 • Step five: as an alternative finding, considering Plaintiff's RFC, age,
- 3 education, and work history, Plaintiff could perform work that existed
- 4 in significant numbers in the national economy, such as a bakery
- 5 worker (DOT 524.687-022), a hand packager (DOT 559.687-074), and
- 6 a cleaner/housekeeper (DOT 323.687-014).⁴³

7 Plaintiff timely requested review of the ALJ's decision by the Appeals
8 Council and now this Court.⁴⁴

9 II. Standard of Review

10 The ALJ's decision is reversed "only if it is not supported by substantial
11 evidence or is based on legal error,"⁴⁵ and such error impacted the nondisability
12 determination.⁴⁶ Substantial evidence is "more than a mere scintilla but less than a

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16⁴³ AR 20-28.

17⁴⁴ AR 261.

18⁴⁵ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

19⁴⁶ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), superseded on other
20 grounds by 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an
21 ALJ decision due to a harmless error—one that "is inconsequential to the ultimate
22 nondisability determination").

1 preponderance; it is such relevant evidence as a reasonable mind might accept as
2 adequate to support a conclusion.”⁴⁷

3 **III. Analysis**

4 Plaintiff seeks relief from the denial of disability on four grounds. She
5 argues the ALJ erred at step two when he failed to properly consider new evidence
6 regarding Plaintiff’s adenomyosis/endometriosis, erred when evaluating the
7 medical opinions, and erred in his assessment of Plaintiff’s testimony and the
8 third-party testimony of Plaintiff’s partner. As is explained below, the Court
9 concludes that the ALJ consequentially erred at step two and erred in his
10 evaluation of the medical opinions of Dr. Stuart and Dr. Gade.

11 **A. Step Two “new and material” evidence establishing severe
12 impairments: Plaintiff established consequential error.**

13 Plaintiff contends the ALJ failed to properly consider the medical evidence
14 that established that Plaintiff’s reproductive impairments and related anemia are

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16 ⁴⁷ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
17 1997)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
18 court “must consider the entire record as a whole, weighing both the evidence that
19 supports and the evidence that detracts from the Commissioner’s conclusion,” not
20 simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,
21 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does
22 not indicate that such evidence was not considered[.]”).

1 severe impairments. The Commissioner argues that the ALJ reasonably concluded
2 that Plaintiff's reproductive issues did not constitute a severe impairment that
3 would cause limitations in her ability to perform basic work activities. The Court
4 agrees with Plaintiff that the ALJ failed to properly consider the evidence
5 regarding her reproductive issues and erred in relying on medical opinions from
6 state agency evaluators who reviewed an incomplete medical record.

7 1. Standard

8 There is a presumption of continuing nondisability if a claimant was
9 previously denied disability, that disability denial was final, and there are no
10 changed circumstances.⁴⁸ Although the res-judicata doctrine applies to
11 administrative decisions, the doctrine is "applied less rigidly to administrative
12 proceedings than to judicial proceedings," particularly as to subsequent alleged
13 disability-periods. Therefore, to overcome the presumption of continuing
14 nondisability, the claimant must prove "changed circumstances." Examples of
15 changed circumstances include "[a]n increase in the severity of the claimant's
16 impairment," "a change in the claimant's age category," or a new issue raised by
17 the claimant, "such as the existence of an impairment not considered in the
18 previous application." In addition to the changed circumstance, the new evidence
19 must be material.⁴⁹ The test for materiality of new evidence is whether "there is a

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⁴⁸ *Chavez v. Bowen*, 944 F.2d 691 (9th Cir. 1988); Acquiescence Ruling 97-4p(9).

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⁴⁹ *Chavez*, 844 F.2d at 694; Acquiescence Ruling 97-4(9).

1 *reasonable possibility* that the new evidence would have changed the outcome” of
2 the Commissioner’s determination.⁵⁰ Therefore, the materiality test encompasses
3 more than mere deterioration; it instead encompasses whether the new evidence
4 would have changed the outcome of the ALJ’s analysis supporting the denial
5 determination.

6 At step two of the sequential process, the ALJ determines whether the
7 claimant suffers from a “severe” impairment, i.e., one that significantly limits her
8 physical or mental ability to do basic work activities.⁵¹ This involves a two-step
9 process: 1) determining whether the claimant has a medically determinable
10 impairment and 2) if so, determining whether the impairment is severe.⁵²

11 Neither a claimant’s statement of symptoms, nor a diagnosis, nor a medical
12 opinion sufficiently establishes the existence of an impairment.⁵³ Rather, “a
13 physical or mental impairment must be established by objective medical evidence
14 from an acceptable medical source.”⁵⁴ Evidence obtained from the “application of a
15 medically acceptable clinical diagnostic technique, such as evidence of reduced joint

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17 ⁵⁰ *Booz v. Sec’y of Health & Human Servs.*, 734, F.2d 1378, 1380 (9th Cir. 1984)
18 (quoting *Dorsey v. Heckler*, 702 F.2d 597, 60405 (5th Cir. 1983).

19 ⁵¹ 20 C.F.R. §§ 404.1520(c), 416.920(c).

20 ⁵² *Id.* § 416.920(a)(4)(ii).

21 ⁵³ *Id.* § 416.921.

22 ⁵⁴ *Id.*

1 motion, muscle spasm, sensory deficits, or motor disruption” is considered objective
2 medical evidence.⁵⁵ If the objective medical signs and laboratory findings
3 demonstrate the claimant has a medically determinable impairment,⁵⁶ the ALJ
4 must then determine whether that impairment is severe.⁵⁷

5 The severity determination is discussed in terms of what is *not* severe.⁵⁸ A
6 medically determinable impairment is not severe if the “medical evidence
7 establishes only a slight abnormality or a combination of slight abnormalities
8 which would have no more than a minimal effect on an individual’s ability to

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12⁵⁵ 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective medical evidence (2019).
13 See also 20 C.F.R. §§ 416.902(k), 416.913(a)(1).

14⁵⁶ “Signs means one or more anatomical, physiological, or psychological
15 abnormalities that can be observed, apart from [a claimant’s] statements
16 (symptoms).” *Id.* § 416.902(l).

17 Laboratory findings means one or more anatomical, physiological, or
18 psychological phenomena that can be shown by the use of medically
19 acceptable laboratory diagnostic techniques. Diagnostic techniques
20 include chemical tests (such as blood tests), electrophysiological
21 studies (such as electrocardiograms and electroencephalograms),
22 medical imaging (such as X-rays), and psychological tests.

23 *Id.* § 416.902(g).

24⁵⁷ See Soc. Sec. Ruling (SSR) 85-28 at *3 (1985).

25⁵⁸ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

1 work.”⁵⁹ Because step two is simply to screen out weak claims,⁶⁰ “[g]reat care
2 should be exercised in applying the not severe impairment concept.”⁶¹

3 2. The ALJ’s findings

4 The ALJ articulated the following reasoning as to his consideration of
5 Plaintiff’s reproductive health issues:

6 I considered the claimant’s other diagnosed and alleged conditions,
7 specifically including right wrist pain, acute pelvic inflammatory
8 disease, adenomyosis, dysmenorrhea, ankle sprain, anemia, and
9 plantar fasciitis (Exhibits C4F, pp. 7, 11; C5F, pp. 6, 10; C7F, pp. 14,
10 71). I find there is minimal clinical evidence to corroborate or support
11 the finding of significant impact on the claimant’s ability to perform
12 work-related activities as a result of these impairments, considered
13 individually or in combination. These conditions appear sparingly in
14 the record, have been described as mild, or have otherwise resolved
within a 12-month period. The claimant has urged that her menstrual
period lasts up to ten days per month now with severe worsening
symptoms such that she is unable to move. Although the record shows
reports to providers indicating worsening menstruation issues, the
record does not establish findings or even allegations of sustained
limitations longer than 12 months in duration. Moreover, there is
relatively recent evidence her menstrual cycles last significantly less
time than she has alleged (Exhibit C5F, p .6).⁶²

15 The ALJ noted that “[t]here remains a paucity of medical opinion evidence
16 supporting the claimant’s allegations.”⁶³ He went on to consider the medical
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18 ⁵⁹ *Id.*; see SSR 85-28 at *3.

19 ⁶⁰ *Smolen*, 80 F.3d at 1290.

20 ⁶¹ SSR 85-28 at *4.

21 ⁶² AR 22.

22 ⁶³ AR 26.

1 opinions of the state agency evaluators, stating:

2 At the initial and reconsideration determination levels, the state
3 agency medical consultants determined the claimant could perform
4 exertionally light work with essentially the same limitations as found
5 in the Prior Decision (Exhibits C9A, C11A). The consultants reasoned
6 the totality of the evidence did not support worsening, and in fact
7 represented some improvement in fibromyalgia symptoms with
8 Cymbalta medication (Exhibit C9A, p. 3). This is consistent with the
9 totality of the record, including the general lack of abnormal objective
10 and observational findings and the claimant's activity level. These
11 opinions are generally persuasive.⁶⁴

12 3. Relevant medical records

13 On October 4, 2021, Plaintiff presented to Carol Freeman, FNP, of Tri-Cities
14 Community Health for pain and severe cramping associated with adenomyosis.⁶⁵
15 FNP Freeman noted that Plaintiff had been diagnosed with adenomyosis in
16 January 2020 in the ER and was sent for a consultation but hysterectomy was not
17 recommended.⁶⁶ She noted that Plaintiff was requesting a hysterectomy and
18 reporting very bad pain and heavy bleeding during menses, lasting 5-6 days.⁶⁷ On
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64 AR 27.

65 AR 418. Adenomyosis is a condition in which the lining of the uterus grows into
the uterine wall, causing the uterus to thicken and enlarge, and causing painful
periods, heavy bleeding and pelvic pain. Cleveland Clinic, Adenomyosis,
www.clevelandclinic.org (last viewed February 21, 2025.)

66 AR 419.

67 *Id.*

1 examination, Plaintiff had heavy, clear discharge and her uterus was enlarged to 8
2 week size.⁶⁸ FNP Freeman diagnosed dysmenorrhea and referred Plaintiff for
3 consult with a surgeon, Dr. Williams, regarding hysterectomy.⁶⁹

4 On October 12, 2021, at a follow up with Jesus Marcelo, MD, it was noted
5 that Plaintiff had a diagnosis of fibromyalgia, and uterine adenomyosis with severe
6 pain and had an appointment scheduled with a surgeon Dr. Williams.⁷⁰ An
7 ultrasound performed on October 20, 2021, indicated a retroverted uterus, ill-
8 defined endometrium with 7 mm thickness, and an impression of adenomyosis.⁷¹

9 On April 20, 2022, Plaintiff presented to Dr. Marcelo and was assessed with
10 fatigue and muscle spasms.⁷² She was noted to be in moderate distress.⁷³

11 On July 22, 2022, Plaintiff presented to Leilani Weaver, ARNP, at Whitman
12 Medical Clinic in Colfax, to establish care after moving.⁷⁴ ARNP Weaver noted that
13 Plaintiff had been seen in the ER on July 10, 2022, by Dr. Vance and was found to
14 be suffering from bladder stones and also found to be anemic with a hemoglobin

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16 ⁶⁸ AR 420.

17 ⁶⁹ *Id.*

18 ⁷⁰ AR 422.

19 ⁷¹ AR 529.

20 ⁷² AR 458.

21 ⁷³ *Id.*

22 ⁷⁴ AR 448.

1 level of 8.6 and a hematocrit of 30.0.⁷⁵ Plaintiff reported being diagnosed with
2 endometriosis/adenomyosis in 2020, and experiencing regular menstrual cycles of
3 5-6 days with heavy cramps and significant bleeding.⁷⁶ ARNP Weaver assessed
4 kidney stones, bladder stones, eczema, endometriosis, fibromyalgia, and plantar
5 fasciitis.⁷⁷ ARNP Weaver noted that she spoke with a specialist who recommended
6 starting Plaintiff on vitamin B-12 and folic acid supplements, 3 infusions of iron
7 sucrose 300 mg with 1 100 mg infusion per week, and then rechecking levels.⁷⁸
8 ARNP Weaver diagnosed current issues as anemia; dysmenorrhea, likely the cause
9 of anemia; and fatigue.⁷⁹

10 On February 4, 2023, Plaintiff presented to Fermin Godinez, MD, of the
11 Providence Health Care ER.⁸⁰ Plaintiff reported left lower quadrant abdominal
12 pain since February 2, 2023, and reporting that at an ER visit on February 2, 2023,
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15 ⁷⁵ *Id.* A normal hematocrit level for an adult female is 36 to 44, and a normal
16 hemoglobin level for an adult female is 11.6 to 15. Cleveland Clinic, Hematocrit Test,
17 www.clevelandclinic.org (last viewed February 21, 2025.)

18 ⁷⁶ *Id.*

19 ⁷⁷ AR 448-449.

20 ⁷⁸ AR 452.

21 ⁷⁹ AR 452-453.

22 ⁸⁰ AR 465.

1 her labs and ultrasound imaging were normal but a CT scan was recommended.⁸¹
2 Plaintiff presented to follow-up with the CT scan, as pain had persisted.⁸² On
3 examination, Plaintiff's abdomen was tender to palpation.⁸³ A CT scan of the
4 abdomen resulted in the following findings: "Fluid-filled tubular structure in the
5 left lower quadrant with markedly enhancing wall, concerning for salpingitis
6 versus tubo-ovarian abscess. Enhancement of the uterus with prominent
7 endometrium is also noted. Surgical consultation recommended."⁸⁴ Plaintiff was
8 admitted as an inpatient and treated non-surgically with IV antibiotics.⁸⁵ On
9 discharge, Plaintiff was assessed with acute pelvic pain, acute salpingitis, and
10 acute pelvic inflammatory disease.⁸⁶ When discharged, Plaintiff requested that she
11 be continued with her prescriptions on discharge for adenomyosis management.⁸⁷

12 On March 6, 2023, Plaintiff presented to Tina Branson, PA-C, of Kadlec
13 Clinic Associated Physicians for Women for follow-up.⁸⁸ Plaintiff reported that her
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15 ⁸¹ AR 466.

16 ⁸² *Id.*

17 ⁸³ AR 469.

18 ⁸⁴ AR 470.

19 ⁸⁵ AR 470-471.

20 ⁸⁶ AR 476.

21 ⁸⁷ AR 483.

22 ⁸⁸ AR 463.

1 pelvic pain had resolved after a two-week treatment with antibiotics.⁸⁹ A
2 comparison transvaginal pelvic ultrasound indicated that the prior hydrosalpinx
3 was not seen.⁹⁰

4 On September 27, 2021, state agency evaluator, Robert Stuart, MD reviewed
5 Plaintiff's file at the initial level.⁹¹ At the time that Dr. Stuart reviewed the file,
6 there were no medical records yet in evidence from Providence Hospital, where
7 Plaintiff had been treated for and diagnosed with adenomyosis/endometriosis.⁹²
8 Dr. Stuart opined that Plaintiff had the following RFC: occasionally lift and carry
9 up to 20 pounds; frequently lift and carry up to 10 pounds; frequently stoop;
10 occasionally climb ramps and stairs, climb ladders or scaffolds; kneel, crouch or
11 crawl; limited reaching overhead with her right arm; and avoid even moderate
12 exposure to extreme cold or hazards.⁹³ Dr. Stuart gave the following explanation
13 regarding his opined RFC:

14 Records show claimant with significant disability-seeking mindset.
15 There is no evidence of any fractures since ALJ decision. No evidence
16 of adenomyosis, evaluation for Crohn's, or any abdominal pain in
17 MER. In fact all recent notes show claimant denying any abdominal
18 pain or problems. Exams purporting to indicate fibromyalgia tender
19 points are invalid since no control points were tested and there is not

18 ⁸⁹ *Id.*

19 ⁹⁰ AR 465.

20 ⁹¹ AR 161.

21 ⁹² AR 156.

22 ⁹³ AR 160-161.

1 the required evidence of chronic fatigue and exclusion of other causes.
2 The claimant is deemed capable of at least the RFC as written.⁹⁴

3 On June 14, 2022, state agency evaluator, Glenn Gade, MD, reviewed
4 Plaintiff's file at the reconsideration level.⁹⁵ At the time that Dr. Gade reviewed
5 Plaintiff's file, there remained no evidence of records from Providence Health
6 Services, where Plaintiff had been treated for and diagnosed with
7 adenomyosis/endometriosis.⁹⁶ Additionally the medical records from Tri-Cities
8 Community Health had been recently received but not added to the file.⁹⁷

9 Dr. Gade adopted Dr. Stuart's opined RFC.⁹⁸ Dr. Gade offered an
10 explanation of his opined RFC that was identical to Dr. Stuart's, stating:

11 Records show claimant with significant disability-seeking mindset.
12 There is no evidence of any fractures since ALJ decision. No evidence
13 of adenomyosis, evaluation for Crohn's, or any abdominal pain in
14 MER. In fact all recent notes show claimant denying any abdominal
15 pain or problems. Exams purporting to indicate fibromyalgia tender
16 points are invalid since no control points were tested and there is not
17 the required evidence of chronic fatigue and exclusion of other causes.
18 The claimant is deemed capable of at least the RFC as written.⁹⁹

17 ⁹⁴ AR 161.

18 ⁹⁵ AR 172.

19 ⁹⁶ AR 167.

20 ⁹⁷ *Id.*

21 ⁹⁸ AR 171-172.

22 ⁹⁹ AR 172.

1 4. Analysis

2 The ALJ's analysis of Plaintiff's adenomyosis was cursory and flawed. First,
3 the ALJ made a conclusory finding that Plaintiff's condition would cause only mild
4 symptoms and would cause no limitation on Plaintiff's ability to perform work
5 activities.¹⁰⁰ At no point in the decision did the ALJ address the objective findings
6 in the medical record, including ultrasound imaging showing that Plaintiff's uterus
7 was enlarged or that the wall had significant thickening.¹⁰¹ Laboratory tests
8 indicated that Plaintiff suffered from an acutely low hematocrit and hemoglobin
9 level, which ARNP Weaver opined was related to her adenomyosis.¹⁰² Both FNP
10 Freeman and Dr. Marcelo noted that Plaintiff experienced severe pain.¹⁰³ There is
11 no indication that the ALJ considered that the level of Plaintiff's pain was severe
12 enough that she requested on at least three occasions that a radical hysterectomy
13 surgery be scheduled.¹⁰⁴

14 Moreover, the ALJ's reasoning that the condition did not last for a minimum
15 of twelve months is not supported by the record. Plaintiff's adenomyosis was
16 diagnosed in January 2020, was treated regularly, and was still considered acute
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18 ¹⁰⁰ AR 22.

19 ¹⁰¹ AR 420, 529.

20 ¹⁰² AR 448, 452-453.

21 ¹⁰³ AR 419, 422.

22 ¹⁰⁴ AR 420, 422, 448.

1 by her medical providers as late as 2023.¹⁰⁵ It clearly met the durational
2 requirements to meet the threshold of a severe impairment.

3 The ALJ's assertion that there was a paucity of medical opinion evidence
4 was correct. But that fact detracts from rather than supports the Commissioner's
5 position that the decision was supported by substantial evidence.

6 It is of note that Plaintiff's impairments are equally, if not primarily,
7 physical rather than psychological in nature. While Plaintiff was scheduled to
8 attend a psychological consultative examination with PMHNP Lewis, there was no
9 consultative examination scheduled to evaluate Plaintiff's physical limitations.

10 There were only two medical opinions considered by the ALJ regarding
11 Plaintiff's exertional limitations – those of Dr. Stuart and Dr. Gade.¹⁰⁶ As
12 Plaintiff's counsel noted at the hearing, the medical evidence regarding
13 adenomyosis was not present in the file at the time that the doctors reviewed the
14 file.¹⁰⁷ Both Dr. Stuart and Dr. Gade stated that they saw no medical evidence in
15 the file regarding Plaintiff's adenomyosis.¹⁰⁸

16 Effectively, the ALJ discounted Plaintiff's condition as non-severe at step
17 two without benefit of any medical opinion regarding that impairment and without

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20 ¹⁰⁵ AR 419, 420, 422, 529, 458, 448, 452, 465, 466, 469, 470, 476, 483.
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22 ¹⁰⁶ AR 27.
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¹⁰⁷ AR 62.

¹⁰⁸ AR 161, 172.

1 addressing any of the medical evidence regarding it, beyond a mere recitation that
2 it had been diagnosed. This is error, as the ALJ has failed to develop the record as
3 to the impairment and has failed to properly consider it.

4 “The ALJ always has a special duty to fully and fairly develop the record” to
5 make a fair determination as to disability, even where, as here, “the claimant is
6 represented by counsel.”¹⁰⁹ This “affirmative responsibility to develop the record” is
7 necessary to ensure that the ALJ’s decision is based on substantial evidence.¹¹⁰

8 5. Summary

9 The ALJ’s failure to properly consider Plaintiff’s adenomyosis was
10 consequential. The condition, though intermittent, might have caused frequent
11 absences when acute. Moreover, there was no medical opinion from any source
12 that considered the records regarding this condition, and the ALJ’s reliance on the
13 medical opinions of the state agency evaluators was misplaced. For that reason,
14 the Court concludes that remand is warranted.

15 **B. Medical Opinion: Plaintiff establishes consequential error.**

16 As indicated above, the ALJ erred in relying on the medical opinions of
17 Dr. Stuart and Dr. Gade because crucial evidence had not yet been submitted at
18 the time that they reviewed the file.

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21 ¹⁰⁹ *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003) (cleaned up).

22 ¹¹⁰ *Id.* at 1184.

1 Because no medical opinion was rendered from a medical source that had
2 considered the new impairments alleged, it is necessary for the ALJ to develop the
3 file by either obtaining an opinion or calling a medical expert to testify. Remand is
4 warranted.

5 **C. Plaintiff's Subjective Complaints and Third-Party Witness**

6 **Statements: The Court finds the issue moot.**

7 Plaintiff argues the ALJ failed to properly evaluate her testimony and the
8 testimony of her partner. As discussed above, the ALJ failed to properly consider
9 the medical opinion evidence. Because the Court has remanded the case for
10 consideration of the record as a whole, the Court finds this issue is moot.

11 **D. Remand for Further Proceedings**

12 Plaintiff submits a remand for payment of benefits is warranted. The
13 decision whether to remand a case for additional evidence, or simply to award
14 benefits, is within the discretion of the court.”¹¹¹ When the court reverses an ALJ’s
15 decision for error, the court “ordinarily must remand to the agency for further
16 proceedings.”¹¹²

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¹¹¹ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
20 761 F.2d 530 (9th Cir. 1985)).

21 ¹¹² *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
22 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
23

1 The Court finds that further development is necessary for a proper disability
2 determination. The ALJ is to obtain a medical opinion from a source who has been
3 afforded an opportunity to review the complete medical record, and the ALJ is to
4 then make findings at each of the five steps of the sequential evaluation process.

5 **IV. CONCLUSION**

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. The ALJ's nondisability decision is **REVERSED**, and this matter is
8 **REMANDED** to the Commissioner of Social Security for further
9 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

10 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 17 and**
11 **18**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

12 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
13 provide copies to all counsel.

14 DATED this 26th day of February, 2025.

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16

EDWARD F. SHEA
17 Senior United States District Judge

21 additional investigation or explanation"); *Treichler v. Comm'r of Soc. Sec. Admin.*,
22 775 F.3d 1090, 1099 (9th Cir. 2014).
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